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**In the Supreme Court of the  
United States**

OCTOBER TERM, 1958

No 269

MARION S. ~~PELTER~~, on behalf of himself  
and others similarly situated,

*Petitioner,*

vs.

SOUTHERN PACIFIC COMPANY, a corporation,  
BROTHERHOOD OF RAILROAD TRAIN  
MEN, et al.,

*Respondents.*

**Brief for Respondent  
Southern Pacific Company**

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OCTOBER TERM, 1958

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MARION S. FELTER, on behalf of himself  
and others similarly situated,

*Petitioner,*

vs.

SOUTHERN PACIFIC COMPANY, a corpora-  
tion, BROTHERHOOD OF RAILROAD TRAIN-  
MEN, et al.,

*Respondents.*

## Brief for Respondent Southern Pacific Company

### QUESTIONS PRESENTED

The questions presented for review are set forth in the Brief for Petitioner. The first question is more accurately stated as follows:

Whether the procedure established by the Dues Deduction Agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right to change unions under the Railway Labor Act.

## STATEMENT OF THE CASE

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201, for the purpose of determining a question in actual controversy between petitioner, Marion S. Felter and others similarly situated, and respondents, Southern Pacific Company (hereinafter referred to as the "Carrier") and Brotherhood of Railroad Trainmen (hereinafter referred to as "B.R.T."), to wit: the question of the validity under the Railway Labor Act (45 U.S.C. 152, Eleventh) of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Carrier and the B.R.T., provides in substance that the Carrier shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the B.R.T. by members thereof from their wages, "upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto \* \* \*." This arrangement is commonly (and hereinafter) referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 75-76) further provides (in part):

"[1] (c). Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. *The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company.*

2. *Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employee is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to*

*the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:*

(a). A list showing any changes in the amounts to be deducted from the wages of employes, with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employes from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employe so listed. Where no changes are to be made the list shall so state.

(b). A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employe so listed. Where there are no such additional employes the list shall so state." (Emphasis supplied.)

The Carrier has scrupulously complied with the terms of the Dues Deduction Agreement (R. 63-64).

Petitioner and others similarly situated executed wage assignments in accordance with the Dues Deduction Agreement (R. 67). Thereafter, petitioner and others submitted revocations of their wage assignments to the Carrier and the B.R.T. (R. 67) which were neither reproduced nor furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 24, 28, 69, 74-75). Those revocations which were submitted to the Carrier were forwarded to the B.R.T. to be processed in accordance with the Dues Deduction

Agreement (R. 28-30). Petitioner was promptly notified by the B.R.T. that the revocation of assignment which he had submitted could not be accepted because it had not been reproduced and furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 25). The B.R.T. then mailed to Petitioner a form which would be accepted by the B.R.T. (R. 25). Petitioner never returned the form furnished to him by the B.R.T. (R. 25-26).

On April 12, 1957, petitioner filed complaint for declaratory and injunctive relief in the United States District Court (R. 3-10). Respondents B.R.T. and Southern Pacific Company filed answers (R. 35, 62). There being no substantial dispute as to the facts, the B.R.T. and the petitioner moved for summary judgment or dismissal (R. 46-47, 59-61). On May 24, 1957, United States District Judge Edward P. Murphy (R. 65-70) held that "the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act", and dissolved the temporary restraining order and dismissed the action. The action of the District Court was affirmed by the Court of Appeals for the Ninth Circuit (R. 85-87). Petitioner has presented this matter to this Court for review.

### **SUMMARY OF ARGUMENT**

In 1951 Congress enacted Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh) which provides that notwithstanding any other provisions of the Act carriers and railway labor organizations shall be permitted to make agreements providing for the deduction of dues upon written authorizations of the employees. Such agreements may provide for the payment of the dues so deducted to the organization representing the craft of employees so

authorizing the deduction in writing. The amendment does not specify what procedure for authorization or revocation of dues deductions shall be contained in the agreements. It does specify that the authorizations shall be revocable in writing after one year.

At the request of the B.R.T. respondent Carrier negotiated the same type of dues deduction agreement which it has with many other labor organizations. This agreement provides for the procurement [and execution] of authorization and revocation forms by the employee from the B.R.T. and the submission of the executed forms to the Carrier through that organization. In Section 2 (R. 75) the agreement provides the procedure by which the Carrier is to place the authorizations in effect, make continuing deductions and terminate deductions. Revocations submitted by employees are to accompany deduction lists certified by the B.R.T. and furnished to the Carrier's Division Superintendent on or before the fifth day of each month. The agreement requires that these certified lists shall show the names of employees from whose wages no further deductions are to be made, *which shall be accompanied by revocation of assignment forms signed by each employee so listed* (R. 76).

Petitioner authorized the deduction of dues from his wages in writing, and the authorization was submitted in the manner provided above. After the expiration of one year he decided to change organizations, which is his prerogative under Section 2, Eleventh (c) of the Act. He submitted his revocation of dues deduction assignment to the officers of the new organization, who forwarded it to the Carrier. In view of the agreement procedure the Carrier submitted the letter to the B.R.T. The latter organization, having received a letter from petitioner which advised that

he desired to revoke his dues deduction authorization, promptly mailed to him a revocation ("A-2") card, to be filled out, returned to the B.R.T. and forwarded to the Carrier in the prescribed manner (R. 25). Petitioner did not elect to follow this procedure; but instead he brought the instant suit, contending that the procedure violated his rights under the Act.

It is respondent Carrier's position that Congress intended that an orderly procedure such as this should be established for the handling contemplated by the dues deduction agreements which it authorized; that the necessity of such a procedure is obvious, because it enables the parties to the agreement, and the employees to reconcile their records and resolve any disputes over improper deductions; that the procedure is not burdensome, particularly in light of the large number of employees and transactions involved; and that petitioner is not in a position to complain that the agreement has been violated, or that he has been deprived of his rights under the Act, because he has not fulfilled the agreed method of revocation, which simply involves the completion of a form which was sent to him for that purpose by the B.R.T. (R. 25). If petitioner had been deprived of his right to revoke his assignment of dues after the execution and return of this form to the B.R.T., he would have been in a different position.

### ARGUMENT

- I. **The Railway Labor Act provides for the negotiation of agreements for the deduction of dues from wages. The Act does not prohibit the inclusion of a reasonable method of effecting revocations.**

In 1951 Congress amended the Railway Labor Act by the addition of Section 2, Eleventh (45 U.S.C. 152 Eleventh), which declares that *"notwithstanding any other pro-*

visions of this Act \* \* \* any carrier \* \* \* and a labor organization \* \* \* shall be permitted \* \* \* (b) to make agreements providing for the deduction by such carrier \* \* \* from the wages of its \* \* \* employees in a craft or class and payment to the labor organization representing the craft \* \* \* of any periodic dues \* \* \* provided, that no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues \* \* \* which shall be revocable in writing after the expiration of one year \* \* \* (Emphasis supplied.) (Petitioner's brief, Appendix, pp. i-iv)

Petitioner relies upon Section 2, Fourth of the Act (45 U.S.C. 152 Fourth), which had, prior to 1951, banned the deduction of dues from the wages of employees. It is apparent from the language of Section 2, Eleventh (45 U.S.C. 152 Eleventh), that Congress was of the view that conditions in the railroad industry had changed to the extent that it was in the public interest to authorize agreements for the deduction of dues, upon the written authorization of employees pursuant to such agreements. It is obvious that some form of reasonable and orderly procedure must be established if confusion and misunderstandings are to be avoided or, at least, reduced to an absolute minimum. What the procedure shall be has been left to the parties when and if they "make agreements providing for the deduction".

There are two separate requirements of the Dues Deduction Agreement here involved. One is that the revocation must be on forms "reproduced and furnished" by the B.R.T., and the other is that the forms must be delivered to the Carrier through the B.R.T., together with certified deduction lists on or before the 5th day of the month in which

the change in deductions is to become operative (R. 75). Clearly, the respondent Carrier is vitally concerned with the latter requirement.

The Carrier receives no benefit whatever from the Dues Deduction Agreement. Such an agreement is solely for the benefit of the Organization and those employees who desire to avoid the inconvenience of making their own individual payments to the Organization of which they are members. Under such circumstances, it is only proper that the organization, the representative of the employee, should have the burden of insuring that revocations are not forgeries, take the responsibility for calculating the amounts to be deducted, be responsible for keeping accurate and up-to-date lists and do such other bookkeeping as does not necessarily have to be performed by the Carrier. In fact, such an arrangement clearly serves the purpose of avoiding disputes and controversies between the Organization and the Carrier and is therefore in accord with the express purpose of the Railway Labor Act (45 U.S.C. § 152, First). Moreover, there is no requirement in the Railway Labor Act that the Carrier enter into a Dues Deduction Agreement, and it would undoubtedly be justified in refusing to make such an agreement, from which it derives absolutely no benefit, without the establishment of an orderly procedure. Unless the Act contemplated the establishment of such an orderly procedure, it would seem unlikely that any Carrier would enter into a Dues Deduction Agreement and that portion of the statute allowing such agreements would become a nullity. Certainly Congress had no such intent.

It is clearly necessary that both the B.R.T. and the Carrier know when an employee revokes his existing authorization for the deduction of his dues, and the Organization is obviously the logical party to receive and determine the

validity of any revocation in the first instance. The requirement that revocations be transmitted to the Carrier through the B.R.T. in no way interferes with the right of the employee to make such revocations, and does not constitute a burden of any kind upon the employee. It is just as easy for the employee to send the revocation to the B.R.T. as to send it to the Carrier.

**II. The procedure established by the Dues Deduction Agreement does not place such an unreasonable burden on employees who wish to withdraw from the Brotherhood as to constitute a violation of an employee's right to change unions under the Railway Labor Act.**

Petitioner assumes in his brief that he has been deprived of the right to revoke his assignment of dues because he is required by the agreement to furnish his revocation through the B.R.T. on the form which they are bound to furnish to him upon his request (petitioner's brief, page 29). He contends also that this procedure constitutes an unreasonable burden upon his right to revoke. Neither of these propositions is tenable, in view of the fact that Congress has specifically declared that dues deduction agreements may be negotiated, so long as they provide a means of revocation by the employees after the expiration of one year. The employee's right to submit an effective revocation is not conditioned in any way by the agreement, except insofar as the agreement spells out the procedure adopted for its presentation. Such procedure is necessary to preclude disputes between the parties to the agreement over the proper deduction of dues. This procedure is not an unreasonable burden upon the employees, because they have the absolute right to revoke by obtaining the agreed form, executing it and presenting it to the B.R.T. This involves no more time or effort than is required to notify the B.R.T.

that the employee wishes to withdraw membership in that organization, and can easily be accomplished at the same time. Notwithstanding petitioner's argument, any persuasion by the B.R.T. of the employee to remain a member would be addressed to the withdrawal from membership, and not singularly to the revocation of the authorization to deduct dues which accompanies the former. There is no showing in this record of any such pressure, which the petitioner implies in his brief (petitioner's brief, page 13).

There is not, nor can there be, any dispute concerning interpretation of the Dues Deduction Agreement. The agreement is clear and explicit. It provides that revocations of wage assignments must be on forms "reproduced and furnished" by the B.R.T. and that the forms must be delivered to the Carrier through the B.R.T. (R. 75). The Court is concerned herein only with the question of whether these requirements are valid under Section 2, Eleventh of the Railway Labor Act (45 U.S.C. § 152, Eleventh).

Petitioner, in his brief, points out that the Railway Labor Act provides that employees shall be free of "interference, influence or coercion" in their choice of representatives (45 U.S.C. § 152, Third). Moreover, the Act also provides that nothing "shall prevent an employee from changing membership from one organization to another organization" (45 U.S.C. § 152, Eleventh (c)). However, the statement of petitioner that the provisions of the Dues Deduction Agreement here under consideration constitute limitations not authorized by the Railway Labor Act, and "poses an immediate obstacle to his exercise of freedom of choice guaranteed to him by law", is erroneous (Petitioner's Brief, pp. 9, 13). There is absolutely nothing in the Railway Labor Act or in any other Act of Congress to indicate that the design of the Act or the intent of Congress was to insure that an

employee would have absolute freedom to skip from one union to another. The purpose of the Railway Labor Act in insuring that certain employees may change unions has been clearly stated by this Court in *Pennsylvania R.R. v. Rychlik*, 352 U.S. 480 (1957) as follows (p. 492):

"It thus becomes clear that the only purpose of Section 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts. The aim of the Section, which was drafted by the established unions themselves, quite evidently was not to benefit rising new unions by permitting them to recruit members among employees who are represented by another labor organization. Nor was it intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility. This is made particularly clear when the provision is taken in the context of American labor relations in general. The National Labor Relations Act contains no parallel to subsection (c), and employees under a union-shop contract governed by that Act must join and maintain membership in the union designated as the bargaining representative or suffer discharge. Similarly, subsection (c) does not apply to *nonoperating employees* where the ~~problem~~ of seasonal intercraft movement does not exist. Railroad employees such as clerks working under a union-shop contract have no right at all to join a union other than the bargaining representative. In other words, once a union has lawfully established itself for a period of time as the authorized bargaining representative of the employees under a union-shop contract, Congress has never deemed it to be a 'right' of employees to choose between membership in it and another competing union. If Congress intended to confer such a right, it would scarcely have

denied the right to nonoperating employees of the railroads or industrial employees under the National Labor Relations Act. The purpose of Section 2, Eleventh (c) was simply to solve the problem of intercraft mobility under railroad union-shop contracts."

Thus, while the petitioner in this case does have the privilege of changing unions, it cannot be contended that it was the intent of Congress to free the privilege of all restrictions no matter how reasonable they might be. Therefore, as correctly stated by the trial court (R. 69):

"The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions."

Petitioner argues that he had withdrawn from the B.R.T. previous to the mailing of the letter from the Order of Railway Conductors and Brakemen containing his intention to revoke his written authorization to deduct dues (R. 20-21). It is contended that any further deductions and payment to the B.R.T. would violate Section 2, Eleventh (c) of the Railway Labor Act (45 U.S.C. 152 Eleventh (c)). To the contrary, the letter does not mention any change of membership, but could equally support the conclusion on the part of the Carrier that the writer of the letter was attempting to persuade petitioner to make the change. The record does not show that the Carrier had any knowledge of petitioner's claimed new affiliation. Since it did not have such information, the petitioner's allegation in this respect (R. 7) was denied by respondent Carrier in its Answer filed in the District Court (R. 62). It is true that Carrier might assume, from the fact that petitioner proposed to revoke his dues-deductions, that he likewise proposed to

change his membership, particularly because of the fact that the writer of the letter was an organization other than the B.R.T. But it is also possible that petitioner desired to pay his dues other than by automatic deductions from his wages. Furthermore it was probable that petitioner intended to change unions when his revocation of dues deductions became effective, which would be the date when he complied with the procedure in the agreement. Petitioner's refusal to utilize this simple procedure would be the sole basis for any such discrepancy.

**III. Where the petitioner has not attempted to present his revocation in accordance with the agreement pursuant to which he executed his dues deduction assignment he cannot complain that his revocation has not been honored.**

**A. Petitioner's failure to have his revocation accepted was due entirely to his own refusal to send in the correct form to the B.R.T.**

In his brief, petitioner contends at length that if required to obtain the proper form from the B.R.T., he may be subjected to pressures not to revoke his wage assignment and above all not to change his union affiliation. However, there is absolutely nothing either in the record or in the Dues Deduction Agreement to give substance to these alleged fears. Respondent Southern Pacific Company concedes that if the B.R.T. refused or failed to furnish the correct and acceptable revocation forms upon request of the petitioner, or if the B.R.T. refused to furnish such forms, unless and until the petitioner submitted to efforts to persuade him not to change his union affiliation, the petitioner would be subjected to unreasonable burdens and would be entitled to effect a revocation of his wage assignment by other means.

However, such conduct, besides being an unreasonable burden upon the right of petitioner to change unions, would also constitute a violation of the Dues Deduction Agreement

itself. Clearly, the Dues Deduction Agreement contemplates that the B.R.T. shall have the acceptable forms in readiness and that the B.R.T. will furnish them promptly to an employee who wishes to revoke his wage assignment. Moreover, the record clearly demonstrates that the B.R.T. *did* have such forms available and *did* furnish the forms promptly to employees who requested them, including the petitioner without dilatory tactics of any kind. In fact, the record clearly shows that as soon as the B.R.T. became aware of the fact that petitioner wished to revoke his wage assignment, the B.R.T. sent him the correct form to fill out even though he had never requested that the correct form be sent to him. Moreover, this form was mailed to him and no personal contact with the B.R.T. was requested, or required (R. 25). Thus, despite all of petitioner's protestations that the B.R.T. could refuse to furnish the forms or might refuse to furnish such forms except under circumstances wherein he could be subjected to pressures not to change his union affiliation, the fact is that none of these contentions are supported by either the Dues Deduction Agreement itself, or by the actual facts. The only reason petitioner failed to accomplish his objective, of revoking his wage assignment, was his refusal to fill out and return the correct form, which was actually furnished to him by the B.R.T.

**B. Petitioner should not be allowed to repudiate the contract of which he has taken advantage and which was made on his behalf by his collective bargaining representative.**

Petitioner in this case is in the position of now attempting to disregard a contract which he has accepted and followed so long as he considered it convenient to do so. The B.R.T. in entering into the Dues Deduction Agreement acted as the chosen craft representative of the petitioner and of

his fellow employees (brakemen). Agreements made by the authorized collective bargaining representative are binding upon the employees for whom it speaks *Atlantic Coast Line R.R. v. Pope*, 119 F.2d 39 (4th Cir., 1941). Even if this were not true, petitioner, by authorizing deductions from his wages pursuant to the agreement, ratified and accepted the terms thereof. Petitioner knew the terms of the agreement because he obtained the correct form to make his original wage deduction authorization; he has never contended that he did not know that the agreement provided that the revocation forms were to be "reproduced and furnished" by the B.R.T. In other words, petitioner was familiar with the agreement; he knew in particular that he had to obtain both the deduction and the revocation forms from the B.R.T.; and the B.R.T. voluntarily furnished him with the correct revocation form. Thus the only reason petitioner failed to have the Carrier cease making the deductions from his wages which he had previously authorized was his apparently deliberate refusal to follow the terms of the contract with which he was familiar, pursuant to which he had originally authorized the deductions.

**CONCLUSION**

In summary, respondent Southern Pacific Company contends that a Dues Deduction Agreement may provide reasonable and orderly procedures governing its operation. The essential right of the employees affected by such an agreement is to be free of *unreasonable* burdens upon the privilege of changing unions. In this case, both the Dues Deduction Agreement itself, and the facts relating to its application to individual employees such as petitioner, show that the method of revocation is reasonable, in furtherance of the purpose of avoiding disputes in accordance with the express provisions of the Railway Labor Act, and does not constitute an unreasonable burden upon petitioner's privilege of changing unions. The decisions of the trial court, and the Court of Appeals for the Ninth Circuit herein, are correct and should be affirmed.

Respectfully submitted,

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Dated: San Francisco, California,  
December 24, 1958.